

AMENDED IN SENATE JULY 5, 2012

AMENDED IN SENATE JUNE 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 197**

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**Introduced by Assembly Member Monning**

January 27, 2011

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An act to ~~amend~~ *add* Section ~~1194.2~~ *of 1698.9* to the Labor Code, relating to ~~employment~~ *farm labor contractors*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 197, as amended, Monning. ~~Recovery of wages: liquidated damages.~~ *Farm labor contractors: successors: wages and penalties.*

*Existing law provides for the regulation and licensure of farm labor contractors by the Labor Commissioner. Under existing law, a violation of these provisions is a misdemeanor, punishable as specified.*

*This bill would also provide that a successor to any licensed or unlicensed farm labor contractor that owed wages or penalties to the predecessor's former employee or employees is liable for those wages or penalties if the successor meets certain criteria. Because failing to discharge the liabilities would be a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Under existing law, in a court action to recover wages unpaid in violation of the minimum wage set by the Industrial Welfare Commission within the Department of Industrial Relations, the court may award liquidated damages to an employee equal to the amount of wages unlawfully unpaid, plus interest.~~

~~This bill would increase the amount of liquidated damages that may be awarded to an employee to twice the amount of the wages unlawfully unpaid, plus interest.~~

~~This bill would incorporate additional changes in Section 1194.2 of the Labor Code proposed by AB 240, to be operative only if AB 240 and this bill are both enacted and become effective on or before January 1, 2012, both bills amend Section 1194.2, and this bill is enacted after AB 240.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1698.9 is added to the Labor Code, to
- 2     read:
- 3     1698.9. A successor to any licensed or unlicensed farm labor
- 4     contractor that owed wages or penalties to the predecessor's
- 5     former employee or employees is liable for those wages or penalties
- 6     if the successor meets any of the following criteria:
- 7     (a) Uses substantially the same facilities or workforce to offer
- 8     substantially the same services as the predecessor employer.
- 9     (b) Shares in the ownership, management, control of the
- 10    workforce, or interrelations of business operations with the
- 11    predecessor employer.
- 12    (c) Employs in a managerial capacity any person who directly
- 13    or indirectly controlled the wages, hours, or working conditions
- 14    of the employees owed wages or penalties by the predecessor
- 15    employer.
- 16    (d) Is an immediate family member of any owner, partner,
- 17    officer, licensee, or director of the predecessor employer or of any
- 18    person who had a financial interest in the predecessor employer.
- 19    For purposes of this section, "immediate family member" means
- 20    spouse, father, mother, brother, sister, son, daughter, uncle, aunt,
- 21    nephew, niece, or grandparent.

1     *SEC. 2. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

10    ~~SECTION 1. Section 1194.2 of the Labor Code is amended to~~  
11    ~~read:~~

12    ~~1194.2. (a) In any action under Section 1193.6 or Section 1194~~  
13    ~~to recover wages because of the payment of a wage less than the~~  
14    ~~minimum wage fixed by an order of the commission, an employee~~  
15    ~~shall be entitled to recover liquidated damages in an amount equal~~  
16    ~~to twice the wages unlawfully unpaid and interest thereon. Nothing~~  
17    ~~in this subdivision shall be construed to authorize the recovery of~~  
18    ~~liquidated damages for failure to pay overtime compensation.~~

19    ~~(b) Notwithstanding subdivision (a), if the employer~~  
20    ~~demonstrates to the satisfaction of the court that the act or omission~~  
21    ~~giving rise to the action was in good faith and that the employer~~  
22    ~~had reasonable grounds for believing that the act or omission was~~  
23    ~~not a violation of any provision of the Labor Code relating to~~  
24    ~~minimum wage, or an order of the commission, the court may, in~~  
25    ~~its discretion, refuse to award liquidated damages or award any~~  
26    ~~amount of liquidated damages not exceeding the amount specified~~  
27    ~~in subdivision (a).~~

28    ~~(c) This section only applies to civil actions commenced on or~~  
29    ~~after January 1, 1992.~~

30    ~~SEC. 1.5. Section 1194.2 of the Labor Code is amended to~~  
31    ~~read:~~

32    ~~1194.2. (a) In any action under Section 98, 1193.6, or 1194~~  
33    ~~to recover wages because of the payment of a wage less than the~~  
34    ~~minimum wage fixed by an order of the commission or by statute,~~  
35    ~~an employee shall be entitled to recover liquidated damages in an~~  
36    ~~amount equal to twice the wages unlawfully unpaid and interest~~  
37    ~~thereon. Nothing in this subdivision shall be construed to authorize~~  
38    ~~the recovery of liquidated damages for failure to pay overtime~~  
39    ~~compensation.~~

1     ~~(b) Notwithstanding subdivision (a), if the employer~~  
2     ~~demonstrates to the satisfaction of the court or the Labor~~  
3     ~~Commissioner that the act or omission giving rise to the action~~  
4     ~~was in good faith and that the employer had reasonable grounds~~  
5     ~~for believing that the act or omission was not a violation of any~~  
6     ~~provision of the Labor Code relating to minimum wage, or an order~~  
7     ~~of the commission, the court or the Labor Commissioner may, as~~  
8     ~~a matter of discretion, refuse to award liquidated damages or award~~  
9     ~~any amount of liquidated damages not exceeding the amount~~  
10    ~~specified in subdivision (a).~~

11    ~~(c) This section applies only to civil actions commenced on or~~  
12    ~~after January 1, 1992.~~

13    ~~SEC. 2. Section 1.5 of this bill incorporates amendments to~~  
14    ~~Section 1194.2 of the Labor Code proposed by both this bill and~~  
15    ~~AB 240. It shall only become operative if (1) both bills are enacted~~  
16    ~~and become effective on or before January 1, 2012, (2) each bill~~  
17    ~~amends Section 1194.2 of the Labor Code, and (3) this bill is~~  
18    ~~enacted after AB 240, in which case Section 1 of this bill shall not~~  
19    ~~become operative.~~